

STATE OF MICHIGAN  
COURT OF APPEALS

---

WILLIAM PRUCHNO and RACHEL  
PRUCHNO,

Plaintiffs-Appellants,

v

ARLENE PRUCHNO,

Defendant-Appellee.

---

UNPUBLISHED

July 8, 2004

No. 245583

Oakland Circuit Court

LC No. 02-038434-CK

Before: Owens, P.J. and Kelly and Gribbs\*, JJ.

KELLY, J. (*dissenting.*)

I respectfully dissent from the majority's opinion that plaintiffs' third-party breach of contract claim is not preempted by the Employee Retirement Income Security Act, 29 USC 1001 *et seq.*

Plaintiffs seek to compel defendant to share her pension benefits pursuant to a postnuptial agreement between defendant and her deceased husband, Albert Pruchno. The postnuptial agreement provides in relevant part:

5. The parties further agree that the Wife shall retain 50% and Charles Pruchno, William Pruchno and Rachel Pruchno Brill, shall equally share 50% of the Husband's Ford Motor Company pension when the Wifemreaches [sic] the age of 65 years, and the Wife shall pay all taxes thereon. Prior to the Wife attaining the age of 65 years, the Wife shall retain 100% of the Husband's pension benefits for her own use, at 100% survivorship of the contributory portion. The Husband agrees not to withdraw from the contributory and noncontributory portion of his pension from Ford Motor Company.

In determining that this provision of the postnuptial agreement is not preempted by ERISA, the majority concludes:

Plaintiffs' complaint seeks to reach half of defendant's share of benefits, which are regulated by ERISA, however, there is no real connection or reference to an ERISA *plan*. The effect of plaintiffs' lawsuit on the plan will be, at best, negligible, because plaintiffs do not challenge their father's beneficiary

---

\*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

designation, nor do they seek to compel *the plan* to pay benefits according to the postnuptial agreement. Therefore, we conclude that the circuit court erred in finding that plaintiffs' cause of action was preempted by ERISA.

I disagree with this conclusion. In my view, the agreement is a pre-distribution assignment prohibited by ERISA. Further, despite plaintiffs' phrasing of their complaint and their assertions on appeal, their claim does in fact challenge their father's beneficiary designation and it does relate to the plan in a way that invokes ERISA's preemption provision.

ERISA's preemption provision, 29 USC § 1144(a), provides, in relevant part:

Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supercede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan.

"State law" includes "all laws decisions, rules, regulations or other State action having the effect of law, of any State." 29 USC 1144(c)(1). Further, 29 USC 1056(d)(1) states that "Each plan shall provide that benefits provided under the plan may not be assigned or alienated." Our Supreme Court construed the meaning of this provision in *State Treasurer v Abbott*, 468 Mich 143, 148; 660 NW2d 714 (2003):

ERISA does not define the terms "alienate" and "assign." Because the federal statute is silent on the question presented, we defer to a federal agency's definition. *Chevron, supra*. The Treasury Department has defined the term "assignment" as "[a]ny direct or indirect arrangement (whether revocable or irrevocable) whereby a party acquires from a participant or beneficiary a right or interest enforceable against the plan, in or to, all or any part of a plan benefit payment which is, or may become, payable to the participant or beneficiary." 26 CFR 1.401(a)-13(c)(1). This definition plainly contemplates a transfer of the interest to *another person, i.e., a person other than the beneficiary himself*.

According to the plain language of the postnuptial agreement, it is clear that at the time the agreement was made, the defendant and Pruchno intended that defendant assign fifty percent of her interest in Pruchno's retirement benefits to plaintiffs. Postnuptial agreements are contracts, and, therefore, review of such agreements is conducted in accordance with the accepted rules of contract construction. *Ransford v Yens*, 374 Mich 110, 113; 132 NW2d 150 (1965). As with other contracts, the courts must ascertain the parties' intent from the plain language of the contract unless the contract is ambiguous. *Id.*; *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d 663 (2000).

The phrase "Charles Pruchno, William Pruchno and Rachel Pruchno Brill, shall equally share 50% of the Husband's Ford Motor Company pension" is quite clear – 50% of defendant's pre-distributed pension benefits are being transferred, or assigned, to plaintiffs. The requirement that defendant pay taxes on the benefits does not alter the meaning of this phrase. If the parties had intended a post-distribution payment of money, rather than a pre-distribution assignment of an interest in the pension benefits, they would have used language to manifest that specific intent, such as "the wife shall pay the children an amount equal to 50% of the wife's share in the husband's pension." Also, if the agreement were for post-distribution payments, plaintiffs would

not be able to sue for future payments, as they do here; they would only be able to sue defendant after the payment became due and went unpaid. As it is, the agreement clearly assigns fifty percent of defendant's future pension benefits to plaintiffs.

By way of their action to enforce this agreement, plaintiffs are indeed challenging their father's beneficiary designation. Pruchno designated defendant as the sole beneficiary of his pension benefits. Plaintiffs claim that they are entitled to fifty percent of these benefits based on the postnuptial agreement. Although they implore this Court to recognize that their claim is not based on the theory that they have an interest in Pruchno's pension benefits, I view this assertion as putting form over substance. Despite what they assert, if plaintiffs are suing for pension benefits as third-party beneficiaries of the postnuptial agreement, they are necessarily claiming that the agreement provides them an interest in the pension benefits.

In *Abbott*, our Supreme Court noted: "The prevailing view is that ERISA does not protect pension funds after the beneficiary receives them." In that case, it held that a disbursement of pension funds after they were deposited in the beneficiary's account was not precluded. And, because *Abbott* continued to receive all of his pension benefits, albeit at his prison address, there was no pre-distribution assignment. But in this case, the postnuptial agreement assigns a portion of defendant's interest in the pension before the actual distribution of the funds. It is irrelevant that defendant may receive the pension benefits first and then disburse them to plaintiffs. It is the assignment of the *interest* that is prohibited, not the beneficiary's post-distribution disbursement of funds.

Further, I disagree with the majority's conclusion that in plaintiffs' claim "there is no real connection or reference to an ERISA *plan*." The majority relies on plaintiffs' assertion on appeal that they do not intend to enforce the assignment against the plan. But plaintiffs' proclamation that they do not intend to enforce the assignment against the plan and their choice to proceed in this action against defendant rather than the plan are not determinative of whether the agreement is enforceable against the plan. The agreement is enforceable against the plan if plaintiffs can compel the plan to recognize their interest in the pension benefits. I am not convinced that plaintiffs would be unable to compel the plan to recognize their interest in the pension benefits if plaintiffs received a judgment in their favor in this case.<sup>1</sup>

As where a wife's purported transfer by will of her interest in her husband's pension benefits was a prohibited "assignment or alienation," it would be contrary to ERISA's purposes to permit the third-party beneficiaries to a postnuptial agreement to acquire competing interests in undistributed pension benefits when such benefits "are intended to provide a stream of income to participants and their beneficiaries." *Boggs v Boggs*, 520 US 833, 851; 117 S Ct 1754; 138 L Ed 2d 45 (1997). In *Boggs* as here, the plan was not a party, but the Court ruled "[r]eading ERISA to permit nonbeneficiary interests, *even if not enforced against the plan*, would result in

---

<sup>1</sup> In fact, at one point during the trial court proceedings, plaintiffs argued that the pension funds should be placed in escrow *before* being distributed to defendant in order that their share be protected. It is not difficult to imagine that the next step to enforcing any judgment would be to require the plan to pay the pension directly to defendants.

troubling anomalies.” Likewise, in *Ford Motor Co v Ross*, 129 F Supp 2d 1070, 1072-1073 (ED Mich, 2001), the court held:

[I]t does not matter that Defendant Estate seeks, through its remaining state law claims, to enforce its claimed right to the surviving spouse benefits only after they have been distributed since its rights are based on the theory that it had a right to the undistributed pension plan benefits in the first instance.

Similarly, plaintiffs’ action is necessarily premised on the theory that the interest was assigned to them before distribution of the funds. Consequently, if plaintiffs obtain a judgment against defendant, but plaintiff fails to pay and defendants’ are unable to attach a lien to any of defendant’s property, plaintiffs may then (despite their original intention) attempt to compel the plan to pay the benefits directly to them pursuant to the judgment against defendant. This is but one of the “troubling anomalies” I can envision if plaintiffs are permitted to go forward with their claim despite ERISA’s preemption. For this reason, I would affirm.

/s/ Kirsten Frank Kelly